

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF THE TREASURY

REQUEST FOR PROPOSALS # TB 08-015

for

FINANCIAL ADVISOR for the
TREASURY BOARD

J. BRAXTON POWELL
STATE TREASURER

Kelley S. Denton, VCO
Procurement Officer

June 26, 2008

REQUEST FOR PROPOSALS

Cover Sheet

RFP #: **TB 08-015**
Issue Date: **June 26, 2008**
Title: **Financial Advisor**

Issuing Agency: Virginia Department of the Treasury
Attn: Kelley S. Denton, VCO
Procurement Officer
Commonwealth of Virginia
Department of the Treasury
P.O. Box 1879
Richmond, Virginia 23218-1879

Using Agency Department of the Treasury on behalf of
Virginia Treasury Board ("the Board")

Initial period of contract: from August 1, 2008 through July 31, 2011 with the option to renew for two additional one-year terms at the option of the applicable board or authority and in accordance with the terms noted herein.

Sealed proposals will be received until **1:00 p.m. on July 18, 2008** for furnishing the **Financial Advisor Services** described herein.

All inquiries for information should be directed to: Kelley S. Denton at (804) 786-4741 or by e-mail to kelley.denton@trs.virginia.gov.

If proposals are mailed, mail directly to issuing agency shown above, adding one line to the top of the address as follows: **Proposal for Financial Advisor for the Virginia Treasury Board, RFP TB 08-015**. If proposals are hand delivered, deliver to: **Proposal for Financial Advisor, RFP TB 08-015**, Commonwealth of Virginia, Department of the Treasury, James Monroe Building - 3rd Floor, 101 North 14th Street, Richmond, Virginia 23219, Attn: Kelley S. Denton.

In compliance with this Request For Proposals and to all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the **Financial Advisor Services** for the Virginia Treasury Board in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiations.

NAME AND ADDRESS OF FIRM:	DATE: _____
_____	BY: _____
_____	(Signature in ink)
_____	NAME: _____
_____ Zip Code: _____	(Please Print)
	TITLE: _____
FEI/FIN NUMBER: _____	
FAX NUMBER: _____	TELEPHONE NUMBER: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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Commonwealth of Virginia, Department of the Treasury
RFP # TB 08-015 for Financial Advisor

SECTION I: PURPOSE

The purpose of this Request for Proposals ("RFP") is to solicit sealed proposals from qualified firms to establish a contract through competitive negotiations for the provision of services as financial advisor (the "Contractor") for the Virginia Treasury Board.

SECTION II: BACKGROUND

The Virginia Treasury Board (the "Board") was established pursuant to Section 2.2-2416 *et seq* of the *Code of Virginia*. The *Code* is available at the following Internet address: <http://leg1.state.va.us/>. The Board consists of four citizen members, the State Treasurer, the State Tax Commissioner and the State Comptroller. The Department of the Treasury provides staff support for the Board. The Board is responsible for the issuance of all Commonwealth general obligation debt. In addition, the Board must approve the terms and structure of all Commonwealth bond issues supported directly or indirectly by appropriations from the Commonwealth and debt of state institutions of higher education. Further, the Board may be required to approve certain alternative financing structures by institutions of higher education and examine the feasibility of certain financings under the Public-Private Education Facilities and Infrastructure Act of 2002. Under Section 2.2-4517 of the Code, the use of ancillary contracts (e.g., swaps) must receive authorization by the Board. The Board also oversees the leasing of personal property and energy efficiency projects by all state agencies, including the administration of a Master Lease Program (MELP) and the Energy Lease Program. Below is a brief description of each of these programs:

General Obligation Bond Program

Under the Virginia Constitution, two categories of general obligation (GO) bonds are generally issued. First, there is voter-approved debt for capital projects provided under Article X, Section 9(b) of the *Constitution of Virginia*. In 2002, the voters of the Commonwealth approved the issuance of approximately \$1 billion for higher education and park facilities. It is expected that these bonds will be issued over a six to eight year period. The initial transaction was issued on June 18, 2003.

A second type of GO debt involves an on-going program for financing revenue-producing capital projects under Article X, Section 9(c) of the *Constitution*. Eligible projects are projected to generate net project revenues sufficient to service the debt. Projects financed with these "double-barreled" bonds do not require voter approval, but do require the approval of the General Assembly and a feasibility Opinion of the Governor certifying that project revenues are expected to be sufficient to service the debt. Historically, these projects have included toll roads and parking facilities as well as dormitories and dining facilities at institutions of higher education. Treasury reviews financial feasibility studies submitted by agencies and institutions of higher education seeking approval of this type of project. There is currently \$849.5 million in 9(c) bonds authorized.

Bonds for these two programs have been consolidated for issuance purposes into a single series of general obligation bonds, and are typically sold on a competitive basis. The financial advisor is expected to provide the appropriate allocation of bonds by program and/or project (in the case of 9(c)).

Bond Anticipation Notes

During the term of this contract, it may be necessary to put in place a bond anticipation note (BAN) program for providing interim financing for 9(b), 9(c) and possibly other appropriation-supported programs. In the late 1990s, the Treasury Board issued BANs under a tax-exempt commercial paper structure. While this structure was effective, the Treasury Board may want to consider other options.

Alternative Finance Projects/Public Private Education Infrastructure Act (PPEA) of 2002

Treasury and/or Treasury Board are from time to time involved in certain “alternative finance structures.” These may include financings done through a related higher education foundation (e.g., real estate foundation) or through a public-private partnership.

Under such arrangements, a related foundation may hold title to the project, issues securities, and through a support agreement with the institution, service the debt. Certain PPEA projects under consideration by the Commonwealth may require Treasury analysis of financial feasibility or identification/evaluation of alternatives. The financial advisor may be asked to review, evaluate, assist during bond pricing, or otherwise make recommendations to Treasury or the Board on such financings.

Master Equipment Leasing Program/Energy Leasing Program

The Treasury Board operates a master equipment leasing program and an energy leasing program for use by state agencies, institutions and authorities in financing equipment and energy efficiency projects. Under the programs, the Board obtains a line of credit from a leasing company, thereby providing agencies and institutions access to tax-exempt rates. With the approval of the Board, agencies may use alternatives such as vendor or third party financings. *Treasury Board Guidelines for Credit Purchases of Equipment and Energy Projects by State Agencies, Institutions, Boards & Authorities* can be found at the Treasury Internet sight at <http://www.trs.virginia.gov>.

SECTION III: SCOPE OF SERVICES

Financial advisory services provided by the Contractor for the Treasury Board shall include, but are not limited to, the following:

For all GO bond transactions:

- A. Assist and advise Board and staff in developing the most appropriate approach to financing capital projects to ensure the lowest cost to the Commonwealth, including assessment of market conditions, timing, method and manner of sale, call features, flow of funds, security provisions, maturity schedules, bidding parameters, etc.;
- B. Coordinate rating agency relationships as requested. Assist with the development of rating agency and investor strategies;
- C. Assist in the preparation of bond documents and offering documents. Make recommendations concerning form and content to enhance marketability and comply with applicable requirements and guidelines;
- D. Coordinate preparation of the preliminary and final official statements;
- E. On competitive sales, recommend bidding parameters, verify bids and determine that bid specifications are met;
- F. Assist in the evaluation and selection of underwriters, escrow agents, trustees, verification agents, etc., as needed;
- G. On negotiated transactions, serve as advocate for the Board by negotiating terms with the underwriter(s), reviewing the proposed pricing, evaluating the marketing efforts, reviewing other terms recommended by the managing underwriter, making recommendations for sale priorities and designations, and recommending acceptance or rejection of the underwriting proposal;

- H. Review the proposed closing and delivery of the bonds and the anticipated investment of bond proceeds;
- I. Maintain refunding screens for outstanding GOB bond issues. Notify Treasury Board management/staff when refunding candidates appear to meet refunding criteria and recommend course of action; and
- J. Provide written report on the results of sales, including an analysis of market conditions, and detailed reports allocating debt service, costs of issuance, discounts/premiums, accrued interest, etc. among programs (e.g., 9(b)/9(c) bonds), and/or projects (e.g., 9(c) projects).

Upon request of the Board

- K. Analyze projects proposed for financing including evaluation of financing options/alternatives;
- L. Attend working group, Board and other meetings as requested;
- M. Coordinate the purchase of securities (open market or SLGS) for a refunding escrow portfolio;
- N. Review and/or comment on proposed legislation related to Board programs and any policies and procedures, regulations or guidelines relating to its programs;
- O. Assist and advise the Board and staff on matters relating to the Master Equipment Leasing Program, the Energy Leasing Program and the consideration of alternatives (e.g., vendor financing);
- P. Serve as advocate for the Treasury Board in transactions where the Commonwealth will be an obligated party (e.g., capital lease transactions);
- Q. Conduct special studies and analysis;
- R. Advise the Board, the State Treasurer, or staff on matters relating to proposed legislation, municipal finance, debt capacity, etc.;
- S. Provide information of interest to the Board on trends and developments in public finance; and
- T. Assist and advise the Board and staff on matters relating to the finances of the Commonwealth.

Further, the Board may request the Contractor to provide services beyond those itemized above but within the scope of this Agreement. Compensation for such additional services shall be in accordance with the terms of the Contractor's proposal and amendments to that proposal which will constitute the contract between the Board and the Contractor. All financial advisory services will be provided only as the Board may request.

SECTION IV: PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

A. GENERAL REQUIREMENTS

1. RFP Response:

Number of Copies. In order to be considered for selection, Offerors must submit a complete response for the Board. [One (1) original and three (3)] copies of the proposal must be submitted to the Issuing Agency. The Offeror shall make no other distribution of the proposal. Additional copies may be requested.

2. Proposal Preparation:

- a. *Submission of Materials.* Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the Issuing Agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals

that are substantially incomplete or lack key information may be rejected by the Issuing Agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

- b. Small, Women-Owned, and Minority-Owned Business Reports.* All information requested by this RFP on the ownership, utilization and planned involvement of small businesses, women-owned businesses, and minority-owned businesses must be submitted. If an Offeror fails to submit all information requested, the Issuing Agency may require prompt submission of missing information after the receipt of the vendor proposals.
- c. Clarity of Proposal.* Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- d. Organization of Proposal.* Proposals should be organized in the order in which the requirements are presented in the Specific Proposal Requirements sections of the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents. Information which the Offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- e. Single Volume.* Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- f. Ownership of Materials.* Ownership of all data, materials and documentation originated and prepared for the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of Section 2.2-4342.F. of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. **The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in the rejection of**

the proposal.

3. Oral Presentation:

Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Board. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. Treasury will schedule the time and location of these presentations.

B. SPECIFIC PROPOSAL REQUIREMENTS:

Offerors are required to submit the following items, separated by tabs within the proposal:

TAB 1: The RFP, the RFP cover sheet and addenda, if any, completed and signed as required.

TAB 2: General Qualifications

- a. Briefly describe your firm's organizational structure and history and relative emphasis on client development versus retention.
- b. Briefly describe your firm's experience as financial advisor, with emphasis on state level experience (i.e., states, state boards and/or authorities). Provide a listing of financings on which you served as financial advisor from January 1, 2007 to present. Include in the listing:
 - i) Name of issuer
 - ii) Type of financing (i.e., bonds, notes, commercial paper, etc.)
 - iii) Amount
 - iv) Purpose of the issue
 - v) Method of sale
 - vi) Ratings
 - vii) Credit structure (e.g., general obligation, revenue, etc.)
- c. Discuss the analytical ability of the firm and assigned staff. Identify, by name and title, the individuals who will be responsible for this engagement. Describe the role of each individual, provide summary resumes for all individuals listed and identify the individual who will be the primary day-to-day contact for the Board.
- d. Provide information on the outcome of any litigation, regulatory or administrative proceeding, since July 2006, adverse to your firm in any of the professional activities of your firm.

TAB 3: Plans for Providing Services

- a. Briefly describe your firm's understanding of the Board's programs and debt practices.
- b. Describe your firm's approach to providing financial advisory services to meet the needs of the Board. Summarize methods used to obtain market and pricing information.
- c. Describe the factors that would influence the type of sale you would recommend for the Commonwealth's GO Bonds (e.g., competitive, or negotiated). Describe the role of the financial advisor in each method and the expected benefit to the Commonwealth of using a financial advisor.
- d. Describe the strategies you would use and/or recommend to ensure Commonwealth bonds attract a competitive market and achieve a fair price.
- e. Discuss your approach to determining bidding parameters on competitive offerings. Also describe and assess the bidding platforms available to issuers for competitive sales (e.g., Parity and MuniAuction), and provide your thoughts on other variations available to issuers (e.g., maturity-by-maturity versus all or none (AON)).
- f. Describe ideas your firm has (i) to augment existing programs, or (ii) to address future changes in the municipal bond market.
- g. Briefly describe your firm's knowledge and/or experience relating to public-private partnerships and higher education foundation-type financings. Describe any merits, concerns and pitfalls of which the Board should be aware in considering such financings compared to other alternatives.

TAB 4: Small Business Subcontracting Plan

It is the policy of the Commonwealth and the Department of the Treasury to make sure that small businesses and businesses owned by women and minorities receive every opportunity to compete for the Commonwealth's expenditures for goods and services and the Authority will comply with this policy. The Commonwealth and the Authority encourages firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts or other contractual opportunities. Complete Appendix B.

SECTION V: EVALUATION AND AWARD CRITERIA

All proposals received will be reviewed and evaluated by a Selection Committee. The Committee will recommend proposals that most closely meet the requirements of the Board. The following will be used in making the selection:

A. EVALUATION CRITERIA: Proposals will be evaluated using the following criteria:

	POINT VALUE
1. Qualifications/Experience	30
2. Plans for Providing Services – Approach for Meeting Needs of the Board and Understanding Scope of Work	30
3. Price	20
4. Small Business Subcontracting Plan (see Appendix B)	<u>20</u>
TOTAL	100

B. AWARD OF CONTRACT: Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the Board shall select the Offeror or Offerors, which, in its opinion, have made the best proposal(s), and shall award the contract(s) to that Offeror(s). Treasury may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. (Section 2.2-4359D, *Code of Virginia*.) Should the Board determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated.

The Board may elect to award two contracts: one to a primary Contractor and one to a secondary Contractor. The primary Contractor shall perform all duties and responsibilities of the Contract for the term of the Contract. However, if the Board or its designee believes it is in the Board's best interest to reassign duties or some portion thereof, either temporarily or for the remainder of the Contract, the Board or its designee may, in its sole discretion reassign such duties to the secondary Contractor upon written notice. In reassigning such duties, the Board may consider factors to include (but not limited to): whether the service has fallen below expected levels, a real or perceived conflict of interest, or a major change in assigned staff.

SECTION VI: GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 - 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposals, offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. PAYMENT:

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
 3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **OMITTED**

R. OMITTED

S. OMITTED

T. **INSURANCE:** By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 4. Professional Liability/Errors and Omissions \$1,000,000 per occurrence, \$3,000,000 aggregate.
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase

order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- X. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.
- a. **eVA Basic Vendor Registration Service:** \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. **eVA Premium Vendor Registration Service:** \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
- c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
- (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
- (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per

order.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

SECTION VII: SPECIAL TERMS AND CONDITIONS

- A. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for [five (5) years] after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- B. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for [90 days]. At the end of the [90 days] the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- C. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon [30 days] written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- D. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From _____	
Name of Offeror	Due Date Time
Street or Box Number	RFP No.
City, State, Zip Code	RFP Title
Name of Contract/Purchase Officer or Buyer	

The envelope should be addressed as directed on the Cover Sheet of the solicitation. If a bid/proposal not contained in the special envelope is mailed, the Offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- E. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for two additional one year terms, under the terms of the current contract, and at a reasonable time (approximately [30 days]) prior to the expiration.
- F. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work

specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

- G. **UNDERWRITING OF SECURITIES:** The Contractor, or any of its affiliates, may not submit a proposal to the Authority or serve as a member of any syndicate or as a member of a selling group for the purchase of any securities described herein while they serve as financial advisor to the Authority for the issuance of such securities.
- H. **DISCLOSURE:** The Contractor must disclose to the Authority the names, role and compensation arrangements for any individuals or firms used by the firm, directly or indirectly, to obtain or retain municipal securities business which may relate to obligations issued by the Authority. Further, the Contractor must disclose any relationship(s) which may be a conflict of interest for the firm serving as financial advisor to the Authority.
- I. **TRANSFER OF NON-PROPRIETARY DATA:** The Contractor agrees to provide to the Authority non-proprietary data compiled and/or maintained by the Contractor in electronic or other form (e.g., coverage tables) upon termination or expiration of the contract.
- J. **LATE PROPOSALS:** To be considered for selection, proposals must be received by the Department of the Treasury by the due date and time designated on the cover page of this RFP. Proposals received by Treasury after the due date and time are automatically disqualified and will not be considered. **Treasury is not responsible for delays in the delivery of mail by the U.S. Postal Service or private couriers. It is the sole responsibility of the Offeror to ensure that its proposal reaches Treasury by the designated due date and time.**
- K. **AWARD TO MULTIPLE OFFERORS:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.
- L. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
A. It is the goal of the Commonwealth that 40% of its purchases be made from small

businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

- B. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution on a quarterly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
- C. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.
- M. **eVA Business-To-Government Contracts and Orders:** The solicitation/contract will result in multiple purchase order(s) with the eVA transaction fee specified below assessed for each order.
 - a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
 - b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at

\$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov , streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

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SECTION VIII: METHOD OF PAYMENT

Invoices should provide a detailed description of the services provided, rates charges and amounts due. The Board will provide payment, subject to Section VII. C. Availability of Funds, within 30 days from the date of receipt of the invoice and acceptance of services rendered.

SECTION IX: PRICING SCHEDULE

Provide the pricing schedule you will use to charge the Board for outlined services. Completely describe all fixed and variable expenses and the hourly rates of personnel involved in the engagement, estimated expenses, estimated total, etc.

Maximum fee per bond issue (new money)	\$ _____
Maximum fee per bond issue (refunding or combined refunding/new money)	\$ _____
Blended hourly rate for projects other than bond issues	\$ _____
Preparation of Official Statement (POS/OS) ¹	\$ _____
Estimated Out of Pocket Expenses (Detail components i.e., travel, lodging, meals, FedEx, etc.)	\$ _____
Other Expenses (describe) _____	\$ _____
_____	\$ _____
_____	\$ _____

¹ In addition to applicable maximum fee. If requested to coordinate preparation and printing of POS/OS, an electronic copy (MSWord) of the most recent offering document would be provided.

Commonwealth of Virginia, Department of the Treasury
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SECTION X: APPENDICES

APPENDIX A - Standard Contract
APPENDIX B - Small Business Subcontracting Plan

APPENDIX A
FORM OF COMMONWEALTH OF VIRGINIA CONTRACT

Appendix A represents the proposed Contract, which the Commonwealth would expect the Contractor to sign.
Please note any suggestions or additions you would like considered.

COMMONWEALTH OF VIRGINIA
Department of the Treasury
FINANCIAL ADVISOR for the Virginia Treasury Board
Contract Number **TB 08-015**

This Contract is entered into this __ day of ____, 2008, by_____, hereinafter called the "Contractor", and the Commonwealth of Virginia Department of the Treasury, hereinafter called the "Issuing Agency".

WITNESSETH that the Contractor and the Issuing Agency, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Commonwealth as set forth in the Contract Documents.

PERIOD OF CONTRACT: From **July 1, 2008** through **June 30, 2011**, with the option to renew for two additional one-year terms under the terms and conditions stated herein.

CONTRACT DOCUMENTS: The Contract Documents shall consist of:

- (1) This signed Contract;
- (2) The following portions of the Request for Proposals dated July __, 2008:
 - (a) The Statement of Needs
 - (b) The General Terms and Conditions
 - (c) The Special Terms and Conditions, together with any negotiated modifications of those Special Conditions; and
- (3) The Contractor's proposal dated [XXXX ##, 20##] and all written modifications to the Proposal, all of which documents are incorporated herein.

Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in the Commonwealth of Virginia's *Vendor's Manual*.

IN WITNESS WHEREOF the parties have caused this Contract to be duly executed intending to be bound thereby, and certify they are authorized to sign this Contract for the Contractor or the Commonwealth.

CONTRACTOR

ISSUING AGENCY

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

APPENDIX B
SMALL BUSINESS SUBCONTRACTING PLAN
Small Business Subcontracting Plan

Definitions

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude DMBE-certified women- and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- B. If you are not a DMBE-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

- _____ Small Business
- _____ Small and Women-owned Business
- _____ Small and Minority-owned Business

Certification number:_____ Certification Date:_____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Totals \$					